

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2054 of 2017

Smt. Savitri Devi Wife of Shri Nard Sah @ Narad Prasad, Resident of Village- Mahua Singh Rai, P.S.- Mahua, District- Vaishali through her constituted power of attorney holder Purshottam Kumar, Son of Sri Narad Prasad, Resident of Village- Mahua Singh Rai, P.S.- Mahua, District- Vaishali.

... .. Petitioner/s

Versus

Shri Ram Sewak Sah Son of Ram Khelawan Sah and Karta Putra of Late Babulal Sah, Resident of Mohalla- Brahampura, P.S.- Brahmpura, P.O.- M.I.T., Town and district- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jitendra Kishore Verma, Advocate Mr. Anjani Kumar, Advocate Mr. Ravi Raj, Advocate Mr. Shreyash Goyal, Advocate Mr. Abhishek Kumar Srivastava, Advocate Ms. Kumari Shreya, Advocate Mr. Achyut Kumar, Advocate
For the Respondent/s	:	Mr.Jitendra Prasad Singh, Sr. Advocate Mr. Rajeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-07-2025

The present petition has been filed for setting aside the part order dated 09.08.2017 passed in Probate Case No. 23 of 2009 (O.S. No. 02 of 2015) by learned Additional District Judge, Muzaffarpur, whereby and whereunder by a common order on three petitions, the amendment petition dated 15.03.2017 filed by the defendant/petitioner for amendment in the written statement has been rejected.

2. Briefly stated, the facts of the case as it appears



from the record are that the plaintiff/respondent has a filed Probate Case No. 23 of 2009 for grant of probate or letters of administration in respect of registered Will dated 22.04.1970 executed by his father namely, Ram Khelawan Sah in favour of the plaintiff/respondent. The plaintiff/respondent made an averment in the probate petition that Will dated 22.04.1970 was scribed by late Parasnath on 30.03.1970 at the instance of testator Ram Khelawan Sah, who also wanted to execute a gift deed in favour of his daughter Savitri Devi, hence, the testator deferred the execution of the Will and ultimately on 04.05.1970, Ram Khelawan Sah presented the deed of Will and deed of gift for registration and both the deeds were ordered to be registered accordingly. The defendant/petitioner appeared and filed her objection/written statement on 14.01.2015. The defendant/petitioner took a number of objection, inter alia, submitting that the alleged Will is manipulated one and though the testator died on 20.04.1983, case was filed after lapse of 25 years when almost all the witnesses including the attesting witnesses have died. The defendant/petitioner filed a petition on 15.03.2017 under Order VI Rule 17 of the Code of Civil Procedure (hereinafter as 'the Code) for amendment in the written statement/objection submitting that some material



particulars were left to be mentioned inadvertently which are necessary for the proper adjudication of the matter and further stating that particulars sought to be brought through amendment have already been settled as one of the issues in this case. Thus, the amendment would not change the nature of the probate case. The plaintiff/respondent filed his rejoinder on 24.03.2017 to the petition dated 15.03.2017 claiming that the petition has been filed to harass the plaintiff and to delay the disposal of the case. Vide order dated 09.08.2017, the learned trial court rejected the prayer for amendment in the written statement which is under challenge before this Court.

3. Learned counsel appearing on behalf of the petitioner submitted that the order of the learned trial court is not justifiable as without examining the necessity and relevance of the amendment sought for by the defendant/petitioner, the prayer for amendment was rejected by a bald and cryptic finding. Learned counsel, discussing the application of amendment, submitted that the defendant/petitioner has specifically challenged the genuineness of the Will and has categorically averred in paragraph no. 9 that the said Will has been brought into existence fraudulently and illegally. Further from paragraph no. 7 to 16 of the written statement, it is



apparent that the defendant had already asserted that Will in question has been brought into existence by resorting to fraud. But while challenging the Will in question some better particulars were left to be mentioned inadvertently in the written statement and for this reason, amendment in written statement becomes necessary. Learned counsel further submitted that the details and particulars with regard to fraud being committed in preparation of the so called Will are being sought to be introduced in the pleadings for determination of real controversy between the parties. The learned trial court did not consider that the amendment is explanatory in nature and has been sought for to provide better particulars for the case already pleaded which are relevant for adjudication of one of the issues, which already stands settled. Moreover, the plaintiff has been litigating on the said particulars by cross-examination of the witnesses and no prejudice is going to be caused to the plaintiff. Learned counsel further submitted that the learned trial court while refusing the amendment wrongly recorded finding that the defendant wants to incorporate a new case when the facts were already pleaded and only better particulars were being added. Learned trial court further committed an error in holding that the amendment appears to be unnecessary and was not bonafide. Learned trial



court did not consider that the amendment is necessary for determining the real question in controversy between the parties that the Will is genuine or not. Therefore, such finding is perverse. Moreover, the amendment would not cause any prejudice to the plaintiff. Learned counsel further submitted that though the amendment has been sought after commencement of trial but Order VI Rule 17 of the Code confers wide powers on the court to allow amendment petitions on account that the amendments are necessary for the purpose of determining the real question in controversy between the parties. Moreover, amendments in the written statement are to be liberally allowed. Learned counsel thus submitted that the reasons assigned in the impugned order for declining the amendment in the written statement is arbitrary and shows complete non-application of mind. Learned counsel referred to case of ***Krishna Kant Prasad Vs. Sudheshwar Yadav & Ors.***, reported in ***2024 (1) BLJ page 77***, wherein in similar circumstances, learned Co-ordinate Bench upheld the order allowing amendment on the ground that almost all the proposed amendments have already been incorporated in the affidavits of examination-in-chief and the witnesses have been cross-examined at length by the defendants. For this reason, the amendments were held to be



purely explanatory in nature and thus allowed. Learned counsel submitted that the learned Co-ordinate Bench relied on the decision of ***Mohinder Kumar Mehra Vs. Roop Rani Mehra & Ors.***, reported in ***(2018) 2 SCC 132***, wherein the Hon'ble Supreme Court held that the dominant purpose of not allowing the amendment after commencement of trial is to prevent surprises. No prejudice was going to be caused to the defendant as the evidence was led subsequent to the filing of the amendment application for it was the case of the plaintiff that parties have led evidence even on the amended pleading, allowing the amendment was mere formality since the defendant in no manner can be said to be prejudiced by the said amendment and Hon'ble Supreme Court further held that the looking to the purpose and object of the proviso, in the case at hand, it cannot be said that the amendment application filed could not be considered due to bar of the proviso. Learned counsel further submitted that the petitioner does not want to lead any evidence if the amendment is allowed and reiterated that no prejudice is going to be caused to the other side. Moreover, if pleading is not there, the petitioner would not be able to prove her case though evidence may be on record. Learned counsel next referred to the case of ***Dinesh Goyal alias***



Pappu Vs. Suman Agarwal (Bindal) and Others, 2024 OnLine SC 2615, wherein it has been observed that if the issues are pivotal and are necessary for determination of controversy between the parties, even amendment late in time could also be allowed. Learned counsel further referred to the case of ***Raj Kumar Bhatia Vs. Subhash Chander Bhatia, AIR 2018 SC 100*** in which it has been held that entering into the merits of the case which was sought to be set up by the appellant in the amendment was impermissible. The Hon'ble Supreme Court further observed that whether an amendment should be allowed or not, is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. Lastly, the learned counsel referred to the decision of learned Co-ordinate Bench of this Court in the case of ***Maheshwar Narayan Shukla Vs. Ajab Narayan Singh, 2022(5) BLJ 276*** in which reliance was placed on the case of ***Chander Kanta Bansal Vs. Rajinder Singh Anand***, reported in ***(2008) 5 SCC 117***, wherein the Hon'ble Supreme Court held that the liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that



injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment and thus, learned Co-ordinate Bench held that though the proviso limits the scope of pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise. Therefore, it is neither a complete bar nor shuts out entertaining of any later application. Thus, learned counsel submitted that the amendment sought to be incorporated is merely elaboration and is relevant with the prime issue as to whether the Will is genuine or forged and would not lead to changing the nature of the case and would not cause any prejudice to the other side. Hence, the amendment needs to be allowed.

4. Learned senior counsel appearing on behalf of plaintiff/respondent vehemently contended that there is no merit in the present petition as the impugned order does not suffer from any infirmity. Perusal of the proposed amendment shows that the defendant/petitioner wants to plead a new fact by mentioning that signature of Dwarika Sah as a witness was forged. The respondent has filed the case under Section 276 of the Indian Succession Act for grant of probate of registered Will dated 22.04.1970 executed by late Ram Khelawan Sah with



respect to the property described in the Will and on the same day testator executed a gift deed in favour of the present petitioner Savitri Devi and both parties are in possession of their respective properties given in the Will as well as gift. Learned senior counsel further submitted that the present petitioner has also filed Misc. Appeal No. 167 of 2015 before this Court against the order of status quo dated 23.01.2015 passed by learned trial court but the same was dismissed vide judgment dated 06.12.2017 with a direction to the learned trial court to dispose of the case as expeditiously as possible. In the probate case evidence of both the parties was closed and argument was completed in the year 2023 but due to transfer of learned Presiding Officer, the case could not be disposed of. The argument of both the parties have been completed and the case is on the verge of disposal. Therefore, the amendment has been sought at a very late stage. The learned trial court has passed the order taking into consideration the fact that after closure of evidence of the respondent and after examination of so many witnesses on behalf of the petitioner, the proposed amendment has been filed in order to delay the disposal of the case. Learned senior counsel further submitted that the petitioner has utterly failed to show any due diligence for bringing the amendment at



such late stage. Learned senior counsel further submitted that the Hon'ble Supreme Court has deprecated the tendency of allowing the amendments after commencement of trial and in this regard learned senior counsel relied on the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others***, reported in (2009) 10 SCC 84 and relied on paragraph 63 and 64 which read as under:-

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment sought not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh



suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

64.The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit male fide, worthless and/or dishonest amendments."

Learned senior counsel further submitted that if the amendment is allowed at this stage, the contention, of the learned counsel for the petitioner, that the petitioner would not lead further evidence, is not of importance for the reason that if amendment is allowed, the respondent would be required to rebut the same. When son of deceased witness Dwarika Sah had already been examined and cross-examined, the matter would unnecessarily get delayed and complicated. Thus, learned senior



counsel submitted that the impugned order does not suffer from any infirmity and the same needs no interference by this Court.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The petitioner has challenged the part of order dated 09.08.2017 as by the same order three petitions have been disposed of including one filed by the defendant/petitioner under Order VI Rule 17 of the Code. Order VI Rule 17 of the Code reads as under:-

“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Though amendments at pre-trial are to be allowed liberally, the embargo has been placed on amendments sought by the parties after commencement of trial. The statute prohibits



amendment after commencement of trial unless the parties seeking the amendment could show that despite due diligence he could not have sought amendment earlier and prior to the commencement of trial. The Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others*** and subsequently in ***Basavaraj Vs. Indira & Ors.*** has come down heavily on the party who seek amendment after commencement of trial if the facts of the amendment sought for was within knowledge of party from very beginning. The Hon'ble Supreme Court in paragraph 9, 10 and 11 in the case of ***Basavaraj*** (supra) has held as under:-

“9. This Court in [M. Revanna v. Anjanamma \(Dead\)](#) by legal representatives and others opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. [Order VI Rule 17 C.P.C.](#) prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso



to *Order 6 Rule 17 CPC* virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."

(emphasis supplied)

10. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

11. This Court in *Revajeetu's case* (supra) enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of



filing the application.”

6. In the instant case, the petitioner claims the amendment is only with regard to providing better particulars to the case already pleaded and issues already framed on the point and no prejudice being caused to the plaintiff/respondent on this account. But I fail to understand if this was the situation, why the better particulars were not introduced at the time of filing of written statement? Thereafter, another question which arises is why the amendment has not even been sought when the evidence of the plaintiff was recorded and why it has been sought after the evidence of the defendant/petitioner was being recorded. It has been apparent that the defendant was in full possession of information but did not file the petition for amendment. If there is no due diligence being shown by the defendant/petitioner, the amendment sought at this stage would be hit by the proviso to Order VI Rule 17 of the Code. The authorities cited by the learned counsel for the petitioner could not be applied in the present case for the reason that facts are not similar. In ***Mohinder Kumar Mehra*** (*supra*), the amendment application has been filed before the parties could have led their evidence. Further in the case of ***Dinesh Goyal*** (*supra*), the cross-examination of plaintiff was not done then the amendments were sought. Further, reliance placed on ***Raj***



Kumar Bhatia (*supra*) is misplaced for the reason that in the present case the amendment has not been denied by learned trial court entering into the merits of the case. Similarly, reliance to **Krishna** (*supra*) are of no help considering the distinguishable facts. The legal principle that a case is only an authority for what it actually decides, to be kept in the back of mind as observed by *Earl of Halsbury L.C. in Qiinn V. Leathem* and discussed in the case of **State of Orissa Vs. Sudhansu Sekhar Misra and Others**, reported in **AIR 1968 SC 647**.

7. Further, it is an admitted fact that the issues about genuineness of Will has already been framed and evidence has been led on this point so it could not be said that unless the amendment is allowed, the real controversy between the parties could not be decided. Rather it appears that the defendant/petitioner wants to fill up the gaps in her case. Therefore, it cannot be said that the amendment sought for is imperative for proper and effective adjudication of the case.

8. In the light of discussion made herein before, I do not find any error of jurisdiction by the learned trial court in passing the impugned order dated 09.08.2017 hence, the same is affirmed. Accordingly, the present petition stands dismissed.

9. It is made clear that I have not expressed any



opinion on the merits of the case and the case shall be decided by the learned trial court on the material available before it uninfluenced by the disposal of the present civil miscellaneous petition.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR/NAFR
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